IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 16319 of 2004

Between:

G.Adinarayana, s/o G.Sree Ramulu,
E.No.404043, Conductor, Andhra Pradesh State Road Transport Corporation, Dharmavaram Depot, Anantapur District.

.....PETITIONER

AND

1 The Principal Secretary to Government, Labour Employment, Training & Factories Department,
A.P.Secretariat, Hyderabad.
2 The Depot Manager, Andhra Pradesh State Road Transport Corporation, Dharmavaram Depot, Anantapur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ particularly one in the nature of writ of mandamus or any other appropriate writ declaring the action of the respondent in refusing to refer the dispute for adjudication to the Industrial Tribunal-cum-Labour Court, vide letter No.2537/Labl/A2/2002, dated 21-1-2003 is illegal, arbitrary and unjust and consequently direct the first respondent to refer the dispute for adjudication to the Hon'ble Industrial Tribunal-cum-Labour Court.

Counsel for the Petitioner: MR.B.SHIVA KUMAR

Counsel for Respondent No.1: G.P. for Labour

Counsel for the Respondent No.2: Mr. P. Vinayaka Swamy,
S.C. for A.P.S.R.T.C.

The Court at the admission stage made the following :

ORDER:

The petitioner was appointed as a Conductor in the respondent Corporation in the year 1990. He was imposed a punishment of removal from service through the proceedings No. 02/62(116)/90-DVRM, dated 16.02.1991 of the respondent No.2 and the appellate authority modified the order of removal by directing reinstate him into service and further directed that the period of suspension shall be treated as not on duty for the purpose of leave, wages and increments. He was further directed to make security deposit afresh as per rules and further imposed a punishment withholding of two annual increments with cumulative effect through its order dated 26.08.1991. Subsequently, the petitioner raised conciliation through an application, dated 29.08.2002 under Section 10(1) of the Industrial Disputes Act before the Assistant Commissioner of Labour, Ananthapur. The Assistant Commissioner of Labour submitted a failure report to the Government. The grievance of the petitioner is that the Government instead of referring the matter to the Industrial Tribunal, refused to refer the matter on the ground of delay of more than seven years in making the application for conciliation. The petitioner therefore approached this Court through this writ petition seeking to declare that the action of the first respondent in refusing to refer the matter to the Industrial Tribunal on the ground of delay as illegal, arbitrary and unjust. The impugned order dated 21.01.2003 passed by the first respondent indicates that the Government refused to refer the matter on the ground that it is a stale claim, since it was made seven years after the receipt of the punishment.

The learned Counsel for the petitioner submitted that in respect of the

disputes raised under the Industrial Disputes Act, the provisions of Article 137 of Limitation Act are not applicable and he relied on a judgment of the Supreme Court in **Ajaib Singh Vs. The Sirhind Cooperative Marketing-cum-Processing Service Society Limited and another** wherein the Supreme Court held as follows:

> "The provision of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workmen merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by saying the real prejudice and not as a merely hypothetical defence. No reference to the labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can be appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages."

In the light of the judgment of the Supreme Court, the order of the first respondent refusing to refer the matter to Industrial Tribunal on the ground of delay of seven years cannot sustain.

The writ petition is accordingly allowed. The first respondent is directed to refer the matter within eight weeks from the date of receipt of the order to the Industrial Tribunal for adjudication according to the provisions of the Act.

27.10.2004.

MRKR

To

1.The Principal Secretary to Government, LabourEmployment, Training & Factories Department, Andhra Pradesh Secretariat, Hyderabad.

2.The Depot Manager, Andhra Pradesh State Road Transport Corporation, Dharmavaram Depot, Anantapur District.

3.Two C.Cs to the Government Pleader for Labour, High Court Buildings, Hyderabad (O.U.T.).

4.Two C.D copies.